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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,142	12/04/2003	Jean Claude Marcou	CWD-026746-US-P1	1320
44702	7590	05/06/2005	EXAMINER	
OSTRAGER CHONG FLAHERTY & BROITMAN PC 250 PARK AVENUE, SUITE 825 NEW YORK, NY 10177			PATEL, DHIRUBHAI R	
			ART UNIT	PAPER NUMBER
			2831	

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,142

Applicant(s)

MARCOU ET AL.

Examiner

DHIRU R. PATEL

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-43 is/are allowed.
- 6) ☒ Claim(s) 44 is/are rejected.
- 7) ☒ Claim(s) 45-47 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. The finality of the final rejection mailed on 3/16/2005 is hereby vacated to clarify the rejections to claim 44. This office action replaces previously office action sent on 3/16/05 with a new statutory period. Any inconvenience to the Applicant is regretted.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 44 is rejected under 35 U.S.C. § 102(e) as being anticipated by Westlake (6,878,878).

Westlake discloses:

Regarding claim 44, a cover plate 10 (see fig 6 and entire abstract) suitable for use with a

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weatherproof electrical enclosure 2 (see fig 6 and entire abstract), the cover plate comprising: a generally rectangular substrate having a generally planar surface (see fig 6), wherein a top corner of the substrate is cut away to form a first arcuate cut-out section (see fig 6) and further, wherein a bottom corner of the substrate diagonally opposite from the first arcuate cut-out section is cut away to form a second arcuate cut-out section bottom corner (see fig 6 , near element 14) ; a first horizontally mounting hole 20 horizontally disposed on the substrate at a point adjacent to an opposite top corner of the substrate (see fig 6); and a second horizontally mounting hole 18 horizontally disposed on the substrate at a point adjacent to an opposite bottom corner of the substrate (see fig 6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103 (a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time

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a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103©) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

3. Claim 44 is rejected under 35 U.S.C. § 103 (a) as being unpatentable over H. G. Knoderer (1,400,824) in view of Westlake (6,878,878).

H. G. Knoderer discloses:

Regarding claim 44, a cover plate 1 (see fig 1, column 1 lines 30-40) suitable for use with a weatherproof electrical enclosure 2 (see fig 1), the cover plate comprising: a generally substrate having a generally planar surface (see fig 1), wherein a top corner of the substrate is cut away to form a first arcuate cut-out section (see fig 1) and further, wherein a bottom corner of the substrate diagonally opposite from the first arcuate cut-out section is cut away to form a second arcuate cut-out section bottom corner (see fig 1, near element 9); a first horizontally mounting hole 4 horizontally disposed on the substrate at a point adjacent to an opposite top corner of the substrate (see fig 1); and a second horizontally mounting hole 4 horizontally disposed on the substrate at a point adjacent to an opposite bottom corner of the substrate (see fig 1) , but fails to disclose each of said mounting holes being elongated .

Westlake teaches the use of a cover plate 10 having an elongated mounting hole 18 (see fig 6) in order to allow for slight variation in alignment of the slots with junction box screw holes (orifices, see column 4 lines 1-8). Therefor, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace mounting hole of the assembly of Knoderer with an elongated mounting hole as taught by Westlake in order to allow for slight variation in alignment of the elongated mounting holes with a junction box screw holes, and it has been held to be within the general skill of a worker in the art to use elongated mounting hole because It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the assembly of Knoderer with the

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holes being elongated shaped, since more than a mere change of form is necessary for patentability. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Note: The weatherproof enclosure is not required to meet the claim under this alternative since it is an intended use and not positively claimed or preamble for which the claim breaths^e no life or meaning. In alternative, under 103, where the enclosure is required, then Westlake at column 1 lines 55-65 discloses that same are obvious in the electrical arts to protect the devices inside so that the weatherproof housing would have been obvious to protect the devices . LRS

Allowable Subject Matter

4. Claims 1-43 are allowed.

5 Claims 45-47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The primary reasons for the indication of the allowability of claims 1-43 and 45-47 are the inclusion therein, in combination as currently claimed, of the limitation of a first adjustable position hinge clip (for claims 1-30) and an adjustable position hinge clip (for claims 31-42) for pivotably connecting the base to the cover (for claims 31-42), the hinge clip comprising a first hook disposed at a top end of the base for attaching the top end of the hinge clip to the first or second mounting rail. and a second hook disposed at a bottom end of the hinge clip

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for attaching the bottom end of the hinge clip to the first or second hinge mounting (for claim 43), and a first, second, third and fourth corner rib, wherein the first and second corner ribs are respectively positioned on opposite ends of the top of the first aperture rib and the third and fourth corner ribs are respectively positioned on opposite ends of the bottom of the second aperture rib and further, wherein removal of the center rib, aperture ribs, insert ribs, side ribs and corner ribs creates a second rectangular opening (for claims 45-47).

The previously listed limitation is neither disclosed nor taught by the prior art of record, alone or in combination.

Conclusion

6. ***Applicant's amendment dated 3/20/05 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).***

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and

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any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Response to Arguments

Applicant's arguments with respect to claim 44 has been considered but are moot in view of the new ground(s) of rejection.

Contact information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DHIRU R. PATEL whose telephone number is 571-272-1983. The examiner can normally be reached on M-TH, 6:30 TO 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on 571-272-1982. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DHIRU R PATEL

Primary Examiner

Art Unit 2831

Dhiru Patel
5/2/05
DHIRU R. PATEL
PRIMARY EXAMINER